

AMENDED IN SENATE JULY 2, 2008  
AMENDED IN SENATE JUNE 19, 2008  
AMENDED IN SENATE JUNE 10, 2008  
AMENDED IN ASSEMBLY APRIL 23, 2008  
AMENDED IN ASSEMBLY APRIL 8, 2008  
AMENDED IN ASSEMBLY MARCH 25, 2008  
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2168**

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**Introduced by Assembly Member Jones  
(Coauthor: Assembly Member La Malfa)**

February 20, 2008

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An act to amend Sections 47000, 47001, 47002, and 47003 of, to add the heading of Article 1.5 (commencing with Section 47004) to Chapter 10.5 of Division 17 of, and to add Article 5 (commencing with Section 47030) to Chapter 10.5 of Division 17 of, the Food and Agricultural Code, and to amend Sections 113789, 113877, and 113880 of, to add Section 113778.2 to, and to add Chapter 12.5 (commencing with Section 114375) to Part 7 of Division 104 of, the Health and Safety Code, relating to farm stands.

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2168, as amended, Jones. Farm stands: direct marketing: retail food.

Existing law sets forth various findings and declarations relating to the direct marketing of agricultural products.

This bill would include certain findings with respect to farm stands and would state that it is the intent of the state to promote the consumption of California-grown produce, as specified.

Existing law authorizes the Secretary of Food and Agriculture to adopt regulations to encourage the direct sale by farmers to consumers of all types of California agricultural products, as specified.

This bill would, instead, authorize the adoption of those regulations to encourage the direct sale by farmers to the public of all types of California agricultural products. The bill would also specify that the regulations may include provisions to ensure that selling activities are conducted without fraud, deception, or misrepresentation.

Existing law provides for the direct marketing of agricultural products, including through certified farmers' markets or at a retail stand located at or near the point of production, subject to specified conditions.

This bill would delete language authorizing this direct marketing by retail stands located at or near the point of production, and would instead authorize field retail stands, as defined, and farm stands, as defined, to engage in similar direct marketing, subject to similar conditions. This bill would also establish farm stands, as defined, subject to certain specified requirements, as another form of direct marketing outlet. The products available from, and the restrictions and requirements that apply to, these direct marketing venues would vary, as specified.

Existing law provides that any violation of these provisions is a misdemeanor.

Because this bill would create a new crime, the bill would impose a state-mandated local program.

Existing law, the California Retail Food Code (CRFC), provides for the regulation of health and sanitation standards for retail food facilities by the State Department of Public Health. Existing law defines "food facility," "produce," and "producer" for these purposes. A violation of any provision of the CRFC is a misdemeanor.

This bill would include farm stands, as defined, for purposes of permitting and enforcement, within the definition of "food facility." The bill would require farm stands to meet specified requirements. By creating new crimes, this bill would impose a state-mandated local program.

This bill would also revise the definitions for "produce" and "producer," as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*This bill would incorporate additional changes to Section 113789 of the Health and Safety Code, proposed by SB 1359, to be operative only if both this bill and SB 1359 are enacted and become effective on or before January 1, 2009, each bill amends Section 113789 of the Health and Safety Code, and this bill is enacted after SB 1359.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 47000 of the Food and Agricultural Code
- 2     is amended to read:
- 3     47000. The Legislature finds and declares all of the following
- 4     with regard to the direct marketing of agricultural products:
- 5     (a) Direct marketing of agricultural products benefits the
- 6     agricultural community and the consumer by, among other things,
- 7     providing an alternative method for growers to sell their products
- 8     while benefiting the consumer by supplying quality produce at
- 9     reasonable prices.
- 10    (b) Direct marketing is a good public relations tool for the
- 11    agricultural industry that brings the farmer face-to-face with
- 12    consumers.
- 13    (c) The marketing potential of a wide variety of
- 14    California-produced agricultural products should be maximized.
- 15    (d) Farm stands allow farmers to sell fresh produce and eggs
- 16    grown on their farm as well as other food products made with
- 17    ingredients produced on or near the farm, thus enhancing their
- 18    income and the local economy.
- 19    (e) The department should maintain a direct marketing program
- 20    and the industry should continue to encourage the sale of
- 21    California-grown fresh produce.
- 22    (f) It is the intent of the state to promote the consumption of
- 23    California-grown produce and to promote access to
- 24    California-produced agricultural products. Restaurants and

1 nonprofit organizations can provide assistance in bringing  
2 California-grown products to all Californians.

3 (g) A regulatory scheme should be developed that provides the  
4 flexibility that will make direct marketing a viable marketing  
5 system.

6 (h) The department should assist producers in organizing  
7 certified farmers' markets, field retail stands, farms stands, and  
8 other forms of direct marketing by providing technical advice on  
9 marketing methods and in complying with the regulations that  
10 affect direct marketing programs.

11 (i) The department is encouraged to establish an ad hoc advisory  
12 committee to assist the department in establishing regulations  
13 affecting direct marketing of products and to advise the secretary  
14 in all matters pertaining to direct marketing.

15 SEC. 2. Section 47001 of the Food and Agricultural Code is  
16 amended to read:

17 47001. (a) The secretary may adopt regulations to encourage  
18 the direct sale by farmers to the public of all types of California  
19 agricultural products.

20 (b) These regulations may include provisions to ensure and  
21 maintain quality and wholesomeness of the products, and to ensure  
22 that the selling activities are conducted without fraud, deception,  
23 or misrepresentation.

24 SEC. 3. Section 47002 of the Food and Agricultural Code is  
25 amended to read:

26 47002. California farmers may transport for sale and sell  
27 California-grown fresh fruits, nuts, and vegetables that they  
28 produce, directly to the public, which produce shall be exempt  
29 from size, standard pack, container, and labeling requirements, at  
30 a certified farmers' market, as defined in Section 47004, a field  
31 retail stand, as defined in Section 47030, or a farm stand, as defined  
32 in Section 47050, subject to the following conditions:

33 (a) All fresh fruits, nuts, and vegetables sold shall comply with  
34 the California Code of Regulations governing maturity and quality.

35 (b) No exemption granted by this section supersedes the  
36 provisions of federal marketing orders, state marketing orders, or  
37 any health and safety laws, regulations, or ordinances.

38 (c) All fresh fruits, nuts, and vegetables sold in closed consumer  
39 containers shall be labeled with the name, address, and ZIP Code

1 of the producer, and a declaration of identity and net quantity of  
2 the commodity in the package.

3 (d) If a farmer selling produce pursuant to this section  
4 implements any exemption to size, standard pack, container, or  
5 labeling requirements as provided by this section, those sales may  
6 only be conducted as direct sales to the following:

7 (1) Consumers who are end users.

8 (2) Individuals, organizations, or entities that subsequently sell  
9 the produce directly to end users.

10 (3) Individuals, organizations, or entities that distribute the  
11 produce directly to end users at no cost to those end users.

12 (e) A farmer selling produce under paragraph (2) or (3) of  
13 subdivision (d) shall provide the individual, organization, or entity  
14 a memorandum that lists the identity of the producer, the address  
15 of the producer, and the identity and quantity of the produce  
16 purchased. A bill of sale or a container label including this  
17 information shall meet the requirements of this subdivision.

18 SEC. 4. Section 47003 of the Food and Agricultural Code is  
19 amended to read:

20 47003. The secretary may establish qualifications for persons  
21 selling products directly to the public whenever the sales involve  
22 the use of any exemption granted by this chapter. Certified farmers'  
23 markets and other direct marketing outlets and distributors may  
24 likewise be subject to qualifications.

25 SEC. 5. The heading of Article 1.5 (commencing with Section  
26 47004) is added to Chapter 10.5 of Division 17 of the Food and  
27 Agricultural Code, to read:

28  
29 Article 1.5. Certified Farmers' Markets  
30

31 SEC. 6. Article 5 (commencing with Section 47030) is added  
32 to Chapter 10.5 of Division 17 of the Food and Agricultural Code,  
33 to read:

34  
35 Article 5. Other Direct Marketing Outlets and Distributions  
36

37 47030. Field retail stands are producer-owned and operated  
38 premises located at or near the point of production established in  
39 accordance with local ordinances and land use codes.

1 47050. Farm stands are field retail stands, as defined in Section  
2 47030, that sell or offer for sale California agricultural products  
3 grown or produced by the producer, and also sell or offer for sale  
4 nonpotentially hazardous prepackaged food products from an  
5 approved source or bottled water or soft drinks. All agricultural  
6 products, processed or otherwise, sold at a farm stand shall be  
7 consistent in manner and character with the intent of this chapter.

8 SEC. 7. Section 113778.2 is added to the Health and Safety  
9 Code, to read:

10 113778.2. "Farm stands" are premises, established in  
11 accordance with local ordinances and land use codes, defined under  
12 and operated pursuant to Chapter 10.5 (commencing with Section  
13 47000) of Division 17 of the Food and Agricultural Code and  
14 regulations adopted and enforced pursuant to that chapter, operating  
15 within the requirements set forth in Sections 113789 and 114375.

16 SEC. 8. Section 113789 of the Health and Safety Code is  
17 amended to read:

18 113789. (a) "Food facility" means an operation that stores,  
19 prepares, packages, serves, vends, or otherwise provides food for  
20 human consumption at the retail level, including, but not limited  
21 to, the following:

22 (1) An operation where food is consumed on or off the premises,  
23 regardless of whether there is a charge for the food.

24 (2) Any place used in conjunction with the operations described  
25 in this subdivision, including, but not limited to, storage facilities  
26 for food-related utensils, equipment, and materials.

27 (b) "Food facility" includes permanent and nonpermanent food  
28 facilities, including, but not limited to, the following:

29 (1) Public and private school cafeterias.

30 (2) Restricted food service facilities.

31 (3) Licensed health care facilities.

32 (4) Commissaries.

33 (5) Mobile food facilities.

34 (6) Mobile support units.

35 (7) Temporary food facilities.

36 (8) Vending machines.

37 (9) Certified farmers' markets, for purposes of permitting and  
38 enforcement pursuant to Section 114370.

39 (10) Farm stands, for purposes of permitting and enforcement  
40 pursuant to Section 114375.

1 (c) “Food facility” does not include any of the following:

2 (1) A cooperative arrangement wherein no permanent facilities  
3 are used for storing or handling food.

4 (2) A private home.

5 (3) A church, private club, or other nonprofit association that  
6 gives or sells food to its members and guests, and not to the general  
7 public, at an event that occurs not more than three days in any  
8 90-day period.

9 (4) A for-profit entity that gives or sells food at an event that  
10 occurs not more than three days in a 90-day period for the benefit  
11 of a nonprofit association, if the for-profit entity receives no  
12 monetary benefit, other than that resulting from recognition from  
13 participating in an event.

14 (5) Premises set aside for wine tasting, as that term is used in  
15 Section 23356.1 of the Business and Professions Code and in the  
16 regulations adopted pursuant to that section, if no food or beverage  
17 is offered for sale for onsite consumption.

18 (6) Premises operated by a producer, selling or offering for sale  
19 only whole produce grown by the producer, or shell eggs, or both,  
20 provided the sales are conducted on premises controlled by the  
21 producer.

22 (7) A commercial food processing plant as defined in Section  
23 111955.

24 *SEC. 8.5. Section 113789 of the Health and Safety Code is*  
25 *amended to read:*

26 113789. (a) “Food facility” means an operation that stores,  
27 prepares, packages, serves, vends, or otherwise provides food for  
28 human consumption at the retail level, including, but not limited  
29 to, the following:

30 (1) An operation where food is consumed on or off the premises,  
31 regardless of whether there is a charge for the food.

32 (2) Any place used in conjunction with the operations described  
33 in this subdivision, including, but not limited to, storage facilities  
34 for food-related utensils, equipment, and materials.

35 (b) “Food facility” includes permanent and nonpermanent food  
36 facilities, including, but not limited to, the following:

37 (1) Public and private school cafeterias.

38 (2) Restricted food service facilities.

39 (3) Licensed health care facilities.

40 (4) Commissaries.

- 1 (5) Mobile food facilities.
- 2 (6) Mobile support units.
- 3 (7) Temporary food facilities.
- 4 (8) Vending machines.
- 5 (9) Certified farmers' markets, for purposes of permitting and
- 6 enforcement *pursuant to Section 114370*.
- 7 (10) *Farm stands, for purposes of permitting and enforcement*
- 8 *pursuant to Section 114375*.
- 9 (c) "Food facility" does not include any of the following:
- 10 (1) A cooperative arrangement wherein no permanent facilities
- 11 are used for storing or handling food.
- 12 (2) A private home.
- 13 (3) A church, private club, or other nonprofit association that
- 14 gives or sells food to its members and guests, and not to the general
- 15 public, at an event that occurs not more than three days in any
- 16 90-day period.
- 17 (4) A for-profit entity that gives or sells food at an event that
- 18 occurs not more than three days in a 90-day period for the benefit
- 19 of a nonprofit association, if the for-profit entity receives no
- 20 monetary benefit, other than that resulting from recognition from
- 21 participating in an event.
- 22 (5) Premises set aside for wine tasting, as that term is used in
- 23 Section 23356.1 of the Business and Professions Code and in the
- 24 regulations adopted pursuant to that section, if no food or beverage,
- 25 *except for bottles of wine and prepackaged nonpotentially*
- 26 *hazardous beverages*, is offered for sale for onsite consumption
- 27 *and no food, except for crackers, is served*.
- 28 (6) Premises operated by a producer, selling or offering for sale
- 29 only whole produce grown by the producer, or shell eggs, or both,
- 30 provided the sales are conducted on premises controlled by the
- 31 producer.
- 32 (7) A commercial food processing plant as defined in Section
- 33 111955.
- 34 (8) *A child day care facility, as defined in Section 1596.750*.
- 35 (9) *A community care facility, as defined in Section 1502*.
- 36 (10) *A residential care facility for the elderly, as defined in*
- 37 *Section 1569.2*.
- 38 (11) *A residential care facility for the chronically ill, which has*
- 39 *the same meaning as a residential care facility, as defined in*
- 40 *Section 1568.01*.



1 SEC. 9. Section 113877 of the Health and Safety Code is  
2 amended to read:

3 113877. "Produce" means any whole edible portion of a plant  
4 in its raw and natural state.

5 SEC. 10. Section 113880 of the Health and Safety Code is  
6 amended to read:

7 113880. "Producer" means a person or entity who produces  
8 shell eggs or edible plants by practice of the agricultural arts upon  
9 land that the person or entity controls.

10 SEC. 11. Chapter 12.5 (commencing with Section 114375) is  
11 added to Part 7 of Division 104 of the Health and Safety Code, to  
12 read:

13  
14 CHAPTER 12.5. FARM STANDS  
15

16 114375. Farm stands shall be in conformity with the definition  
17 and provisions of Section 113778.2 and meet all of the following  
18 requirements:

19 (a) Food preparation is prohibited at farm stands with the  
20 exception of food samples which may only occur if conducted in  
21 accordance with paragraphs (1) to (8), inclusive, of subdivision  
22 (b) of Section 114371.

23 (b) Approved toilet and handwashing facilities consistent with  
24 Article 4 (commencing with Section 113310) of Chapter 11 of  
25 Part 6 shall be available for use by farm stand operators or their  
26 employees when food sampling is conducted pursuant to  
27 subdivision (a).

28 (c) Food sales from farm stands shall be limited to the following:

29 (1) Whole produce and shell eggs as described in paragraph (6)  
30 of subdivision (c) of Section 113789.

31 (2) Nonpotentially hazardous prepackaged food products from  
32 an approved source that were grown or produced in close proximity  
33 to the farm stand and in a manner consistent with the intent of  
34 Chapter 10.5 (commencing with Section 47000) of Division 17 of  
35 the Food and Agricultural Code.

36 (3) Any nonpotentially hazardous prepackaged food products,  
37 including bottled water and soft drinks, from an approved source  
38 that has not been grown or produced in close proximity to the farm  
39 stand shall be limited to a 50-square-foot storage and sales area.

(d) No live animals, birds, or fowl shall be kept or allowed within 20 feet of any area where food is stored or held for sale. This subdivision does not apply to guide dogs, signal dogs, or service dogs when used in the manner specified in Section 54.1 of the Civil Code.

(e) All garbage and refuse shall be stored and disposed of in an appropriate manner.

(f) All prepackaged processed food products shall meet the applicable requirements provided in Section 113980 and be stored in an approved vermin proof area or container when the farm stand facility is closed.

*SEC. 12. Section 8.5 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and SB 1359. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 113789 of the Health and Safety Code, and (3) this bill is enacted after SB 1359, in which case Section 8 of this bill shall not become operative.*

~~SEC. 12.~~

*SEC. 13.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.